



State of California – Natural Resources Agency
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GAVIN NEWSOM, Governor
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January 31, 2022

Mr. Scott Greeley
City of Dixon, Community Development Department
600 East A Street
Dixon, CA 95620
sgreeley@cityofdixon.us



Subject: Lincoln Square Project, Mitigated Negative Declaration, SCH No. 2022010090,
City of Dixon, Solano County

Dear Mr. Greeley:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the City of Dixon for the Lincoln Square Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the MND to inform the City of Dixon (City), as the Lead Agency, of potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA) or Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT DESCRIPTION SUMMARY

Proponent: Lewis Land Developers, LLC

Objective: The Project would convert a 13.26-acre undeveloped site on two adjacent parcels into residential housing and a commercial lot. The residential housing would consist of 102 single-family detached lots on 10.99 acres and the commercial lot would consist of a Rotten Robbie convenience store, a gas station, and a car wash on 2.27

¹ CEQA is codified in the California Public Resources Code in Section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

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acres. Primary Project activities include grading, excavation, trenching, building construction, concrete pouring, tree-removal, and landscaping.

Location: The Project is located immediately southwest of the intersection of North Lincoln Street and North First Street/State Route 113, in the City of Dixon, County of Solano. The approximate centroid of the Project is Latitude 38.46545°N, Longitude 121.82326°W and the Assessor's Parcel Numbers are 0108-110-450 and 0108-110-460.

Timeframe: The MND does not specify a timeframe.

ENVIRONMENTAL SETTING

The Project covers 13.26 acres of undeveloped land consisting mainly of non-native annual grassland dominated by wild oat (*Avena fatua*), ripgut brome (*Bromus diandrus*), and Italian rye grass (*Festuca perennis*). In addition, a row of 30 ornamental nonnative trees including London planetree (*Platanus x acerifolia*), coast redwood (*Sequoia sempervirens*), almond (*Prunus dulcis*), and Chinese pistache (*Pistacia chinensis*), and one native coast live oak (*Quercus agrifolia*), occur on the western boundary of the site. The Project is immediately surrounded by residential communities and commercial buildings, with agricultural land predominating the outlying areas. No aquatic features are present on the Project site. Special-status species with the potential to occur in or near the Project site include, but are not limited to, Swainson's hawk (*Buteo swainsoni*), listed as threatened pursuant to CESA; burrowing owl (*Athene cunicularia*), a California Species of Special Concern (SSC); pallid bat (*Antrozous pallidus*), SSC; western red bat (*Lasiurus blossevillii*), SSC; and white-tailed kite (*Elanus leucurus*), a Fully Protected species.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA either during construction or over the life of the Project. **The Project has the potential to result in take of Swainson's hawk, a CESA listed as threatened species, as further described on Page 4 below.** Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064, &

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15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with CESA.

Raptors and Other Nesting Birds

CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

Fully Protected Species

Fully Protected species, such as white-tailed kite, may not be taken or possessed at any time (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures including those recommended by CDFW below, CDFW concludes that an MND is appropriate for the Project.

General Plan Tiering

The MND states that the Project is consistent with the City of Dixon General Plan 2040 certified Environmental Impact Report (EIR) and that the Project may tier its analysis from that EIR (MND page 6). It is unclear to CDFW which analyses included in the previous EIR are relied upon in the MND. CDFW provided public comment during the review period for the General Plan EIR in a letter dated August 6, 2020². In that letter, CDFW recommended providing a clear checklist or procedure for evaluating subsequent projects and clearly citing the portions of the EIR, including page and section references, containing the analysis of the subsequent Project activities' significant effects. While a procedure was not included within the EIR, the MND should still clearly identify the sections and analyses conducted in the EIR which are relevant to

² CDFW's CEQA comment letter includes additional details and citations associated with CEQA tiering: <https://ceqanet.opr.ca.gov/2018112035/2/Attachment/gJ-pYI>

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the current Project. CDFW recommends including an additional appendix or section in the MND with these details.

Environmental Setting and Related Impact Shortcoming

Bat Species of Special Concern and Roosting Bat Habitat

As identified above, the Project is within the range of SSC bat species including pallid bat and western red bat³. The California Wildlife Habitat Relationships model predicts medium suitability for pallid bat and western red bat habitat at the Project site. In addition, the California Bay Area Linkage Network identifies the habitat surrounding the Project area as a core area for pallid bats capable of supporting at least 50 individuals and notes that these bats can use orchards, cropland, and vineyards for invertebrate foraging (Penrod et al. 2013). Mature trees scheduled for removal could provide suitable roosting habitat for SSC bats. These bats are experiencing population declines in California (Brylski et al. 1998). Removal of habitat could result in injury or mortality of these special-status bats, a potentially significant impact. To reduce potential impacts to less-than-significant, CDFW recommends that the MND disclose the potential for these bats to occur in the Project area and incorporate the following mitigation measures.

Mitigation Measure IV-10: Roosting Bat Habitat Assessment and Surveys

Prior to any tree removal, a qualified biologist shall conduct a habitat assessment for bats. A qualified bat biologist shall have: 1) at least two years of experience conducting bat surveys that resulted in detections for relevant species, such as pallid bat, with verified project names, dates, and references, and 2) experience with relevant equipment used to conduct bat surveys. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to tree removal and shall include a visual inspection of potential roosting features (e.g., cavities, crevices in wood and bark, exfoliating bark, suitable canopy for foliage roosting species). If suitable habitat trees are found, or bats are observed, mitigation measure IV-11 shall be implemented.

Mitigation Measure IV-11: Roosting Bat Tree Protections

If the qualified biologist identifies potential bat habitat trees, then tree trimming and tree removal shall not proceed unless the following occurs: 1) a qualified biologist conducts night emergence surveys or completes visual examination of roost features that establishes absence of roosting bats, or 2) tree trimming and tree removal occurs only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, and tree removal occurs using the two-step removal process. Two-step tree removal shall be conducted over two consecutive days. The first day (in the afternoon), under the direct supervision and instruction by a qualified

³ CDFW maintains range maps for all terrestrial wildlife species in California, available at <https://wildlife.ca.gov/Data/CWHR/Life-History-and-Range>.

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biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only; limbs with cavities, crevices or deep bark fissures shall be avoided. The second day the entire tree shall be removed.

In addition, a qualified biologist shall develop a bat roost habitat mitigation plan that identifies roost replacement options, including but not limited to bat boxes and tree planting, and submit the plan to CDFW for review and written approval, unless otherwise approved by CDFW. The bat roost habitat mitigation plan shall be implemented in the same year as the project impacts.

Mitigation Measures and Related Impact Shortcoming

Swainson's Hawk

The MND identifies that Swainson's hawk, a CESA listed as threatened species, has the potential to occur in and near the Project (MND page 42). There are 145 Swainson's hawk California Natural Diversity Database (CNDDDB) occurrences within a 5-mile radius of the Project site and seven CNDDDB occurrences within a 1-mile radius. The MND identifies appropriate survey requirements, nest avoidance buffer zones, and compensatory mitigation for loss of Swainson's hawk foraging habitat in conformance with the draft Solano Multi-species Habitat Conservation Plan (HCP) in Mitigation Measures IV-1 and IV-2 (MND pages 43-44). The MND identifies compensatory mitigation for impacts to nesting Swainson's hawk in Mitigation Measure IV-3, including impacts such as injury to nesting Swainson's hawk or nest abandonment. Impacts to nesting Swainson's hawk are considered a significant impact and take under CESA, and require an ITP as described above. While Mitigation Measure IV-3 references the adoption of the HCP, which is a federal authorization, it does not identify the requirement for a CESA ITP, which is a State authorization. Take of Swainson's hawk is not authorized based solely on an adopted HCP and requires CDFW authorization as well. Please note that the HCP is still in draft form and may not be finalized this year.

To ensure impacts are reduced to less-than-significant, CDFW recommends that Mitigation Measure IV-3 be revised to require the Project to obtain a CESA ITP from CDFW for take of Swainson's hawk prior to Project activities, if take of Swainson's hawk cannot be avoided.

Burrowing Owl

The MND identifies that burrowing owl, an SSC, has the potential to occur in and near the Project (MND page 43). There are 11 burrowing owl CNDDDB occurrences within a 5-mile radius of the Project site, including one occurrence approximately 1.1 miles east and another approximately 0.8 miles south. The MND also identifies four mitigation measures for burrowing owl, Mitigation Measures IV-4 through IV-7, which identify survey requirements, nest avoidance buffers, passive relocation, and compensatory

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mitigation requirements. While CDFW generally supports these mitigation measures, it is not clear how they interact with each other. To provide clarity and reduce potential impacts to burrowing owl to less-than-significant, CDFW recommends replacing the existing measures with the following mitigation measures.

Mitigation Measure IV-4: Burrowing Owl Habitat Assessment, Surveys, and Avoidance

Prior to Project activities, a qualified biologist shall conduct a habitat assessment following Appendix C: Habitat Assessment and Reporting Details of the CDFW *Staff Report on Burrowing Owl Mitigation*⁴ (CDFW 2012 Staff Report). The habitat assessment shall extend at least 492 feet (150 meters) from the Project site boundary or more where direct or indirect effects could potentially extend offsite (up to 500 meters or 1,640 feet) and include burrows and burrow surrogates. If the habitat assessment identifies potentially suitable burrowing owl habitat, then a qualified biologist shall conduct surveys following the CDFW 2012 Staff Report survey methodology. Surveys shall encompass the Project site and a sufficient buffer zone to detect owls nearby that may be impacted commensurate with the type of disturbance anticipated, as outlined in the CDFW 2012 Staff Report, and include burrow surrogates such as culverts, piles of concrete or rubble, and other non-natural features, in addition to burrows and mounds. Time lapses between surveys or Project activities shall trigger subsequent surveys, as determined by a qualified biologist, including but not limited to a final survey within 24 hours prior to ground disturbance. The qualified biologist shall have a minimum of two years of experience implementing the CDFW 2012 Staff Report survey methodology resulting in detections. Detected nesting burrowing owls shall be avoided pursuant to the buffer zone prescribed in the CDFW 2012 Staff Report and any passive relocation plan for non-nesting owls shall be subject to CDFW review.

Please be advised that CDFW does not consider exclusion of burrowing owls (i.e., passive removal of an owl from its burrow or other shelter) as a “take” avoidance, minimization, or mitigation measure for the reasons outlined below. Therefore, to mitigate the impacts of potentially evicting burrowing owls to less-than-significant, Mitigation Measure IV-5 outlined below should require habitat compensation with the acreage amount identified in any eviction plan. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of excluded owls is unknown. Burrowing owls are dependent on burrows at all times of the year for survival or reproduction, therefore eviction from nesting, roosting, overwintering, and satellite burrows or other sheltering features may lead to indirect impacts or “take” which is prohibited under Fish and Game Code section 3503.5. All possible avoidance and minimization measures should be considered before temporary or permanent exclusion and closure of burrows is implemented to avoid “take.”

⁴ CDFW, previously Department of Fish and Game, 2012.
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>

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Mitigation Measure IV-5: Burrowing Owl Habitat Mitigation

If the Project would impact an unoccupied nesting burrowing owl burrow or burrow surrogate (i.e., a burrow known to have been used in the past three years for nesting), or an occupied burrow (where a non-nesting owl would be evicted as described above), the following habitat mitigation shall be implemented prior to Project construction:

Impacts to each nesting site shall be mitigated by permanent preservation of two occupied nesting sites with appropriate foraging habitat within Solano County, unless otherwise approved by CDFW, through a conservation easement and implementing and funding a long-term management plan in perpetuity. The same requirements shall apply for impacts to non-nesting evicted owl sites.

The Project may implement alternative methods for preserving habitat with written acceptance from CDFW.

Nesting Birds

The MND identifies Mitigation Measure IV-8 to avoid potentially significant impacts to nesting birds (MND pages 47 and 48). The existing measure identifies a timeline of 14 days prior to ground-disturbing activities within the nesting season for pre-construction nesting bird surveys. CDFW recommends using a timeline of 7 days to increase the likelihood that newly constructed nests are identified prior to beginning ground-disturbing activities. If a period of more than 7 days elapses between the survey date and start of or resuming Project activities, then an additional survey should be conducted.

GENERAL SUGGESTIONS

Landscape with Native Species

In addition to the above recommendations, CDFW encourages landscaping using native trees and shrubs to benefit native wildlife such as nesting birds and insect pollinators. The removal of habitat for birds from human activities has contributed to the loss of a significant proportion of birds in the United States and Canada since the 1970s (Rosenburg et al. 2019). Similarly, insect pollinators such as monarch butterflies and native bees have declined drastically relative to 1990 levels (Xerces Society Western Monarch Thanksgiving Count 2021, Xerces Society et al. 2018, Forister et al. 2011). Planting native trees, shrubs, and flowering species, is an opportunity to improve conditions for native birds and insects. The MND generally proposes non-native species for landscaping, including Brisbane box (*Lophostemon confertus*), red oak (*Quercus rubra*), and Russian sage (*Salvia yangii*) (MND pages 24 and 26). As an alternative,

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CDFW recommends native species such as valley oaks (*Q. lobata*), western redbud (*Cercis occidentalis*), and narrowleaf milkweed (*Asclepias fascicularis*) where possible.⁵

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the CNDDDB. The CNDDDB field survey form, online field survey form, and contact information for CNDDDB staff can be found at the following link: <https://wildlife.ca.gov/data/CNDDDB/submitting-data>.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Amanda Culpepper, Environmental Scientist, at (707) 428-2075 or Amanda.Culpepper@wildlife.ca.gov, or Ms. Melanie Day, Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov or (707) 210-4415.

Sincerely,

DocuSigned by:

Erin Chappell

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Erin Chappell
Regional Manager
Bay Delta Region

⁵ For further native species recommendations and planting tips, review the Willis L. Jepson Chapter of the California Native Plant Society document *Native Landscape Planting Guide*: https://jepson.cnps.org/images/horticulture/plans/willis_jepson-planting_guide.pdf and the Xerces Society document *Pollinator Plants: California*: https://xerces.org/sites/default/files/2018-05/17-045_02_XercesSoc_Pollinator-Plants_California_web-3page.pdf

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ec: Office of Planning and Research, State Clearinghouse (SCH No. 2022010090)

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